

AG Contract No. KR03-0388TRN  
ADOT ECS File No. JPA 02-202  
Project No. TEA-087-B(003)A  
TRACS No. H6221 01D & 01C  
Section: SR 87 South Bound of Payson  
North Intersection SR 87 with SR 260

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF PAYSON

THIS AGREEMENT is entered into 30th June, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF PAYSON, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 9-240 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. It is to the mutual advantage of the State and the Town to participate in a scenic beautification landscaping along a two-mile section of SR-87 from the southern boundary of Payson to a point north of the intersection of SR 87 with SR 260. The State will design and construct sidewalk landscaping and the Town will maintain the landscaping, hereinafter referred to as the "Project".

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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NO. 26126  
Filed with the Secretary of State  
Date Filed: 06/30/03

Janice K. Brewer  
Secretary of State

By: Darryl D. Graenewald

## **II. SCOPE OF WORK**

### **1. The State will:**

- a. Provide design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve Town review comments.
- b. Call for bids and award one or more construction contract(s) for the Project. Administer same, and make all payments to the contractor(s).
- c. Be responsible for the cost of the construction enhancements, and for its proportionate share of any cost increases. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.

### **2. The Town will:**

- a. Provide for, at its own costs and as an annual item in its budget, proper maintenance of the Project.
- b. Be responsible to maintain sidewalk landscaping. The landscape planting will use low-water plants from a list provided by the Town. Use reclaimed water from a water truck during the initial planting. Following the initial watering the plants will have to survive on natural water.
- c. Not make any changes, additions or deletions without written approval of the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

## **III. MISCELLANEOUS PROVISIONS**

1. This agreement shall remain in force and effect until completion of said project and reimbursements; provided, however, that this agreement, except any provisions for maintenance which shall be perpetual, may be cancelled at any time prior to the advertisement of the Project with 30 days written notice to the other party. It is understood and agreed that, in the event this agreement is terminated by the Town, the State shall in no way be obligated to maintain said maintenance.
2. This agreement shall become effective upon filing with the Secretary of State.
3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.
5. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.
6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Town of Payson  
Town Manager  
303 North Beeline Highway  
Payson, Arizona 85541

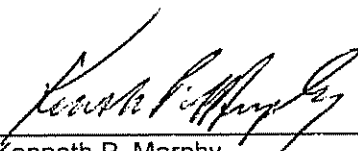
7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
8. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes Section 11-952, D, attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

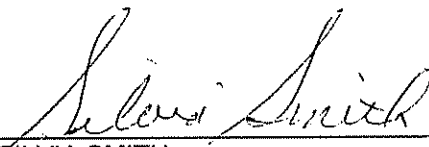
**TOWN OF PAYSON**

By   
Kenneth P. Murphy  
Mayor

**STATE OF ARIZONA**  
Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator

**ATTEST**

By   
SILVIA SMITH  
Town Clerk

**APPROVED FUNDING**

By N/A  
FISCAL MANAGEMENT SERVICES  
Budget Manager

RESOLUTION NO. 1794

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE TOWN OF PAYSON, ARIZONA, RELATING TO THE SCENIC BEAUTIFICATION LANDSCAPING PROJECT ALONG A TWO-MILE SECTION OF STATE ROUTE 87 FROM THE SOUTHERN BOUNDARY OF PAYSON TO A POINT NORTH OF THE INTERSECTION OF STATE ROUTES 87 AND 260.

WHEREAS, the State of Arizona, acting by and through the Department of Transportation (the "State") has presented an intergovernmental agreement to the Town of Payson (the "Town") providing for participation by both parties in the scenic beautification landscaping project along a two-mile section of SR 87 from the southern boundary of Payson to a point north of the Intersection of SR 87 and SR 260; and

WHEREAS, it is the desire of the Town to participate with the State in this beautification landscaping project and to reduce the terms of such participation to writing,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:


Section 1. That the intergovernmental agreement between the State and the Town, a copy of which is attached hereto marked Exhibit "A" and made a part hereof by this reference, be and is hereby approved in substantially the form attached.

Section 2. That Kenneth P. Murphy, Mayor of the Town of Payson, be and is hereby authorized to execute said intergovernmental agreement in substantially the form as set forth upon Exhibit "A".

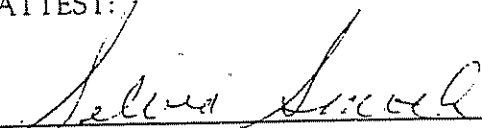
Section 3. That the Town be and hereby is authorized to take such other and further actions as may be necessary or appropriate to implement the terms and intent of said intergovernmental agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 12th day of June, 2003, by the following vote:

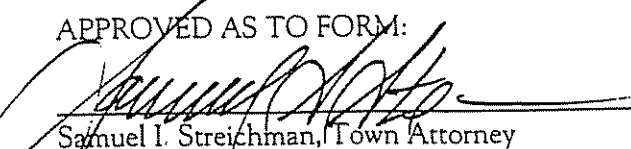
AYES 5 NOES 0 ABSTENTIONS 0 ABSENT 2

  
Kenneth P. Murphy, Mayor

ATTEST:

  
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

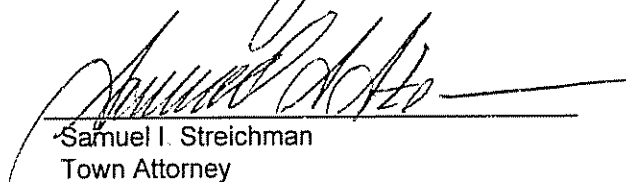
  
Samuel I. Streichman, Town Attorney

APPROVAL OF THE TOWN OF PAYSON ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, among the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF PAYSON, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

Approved To Form

DATED this 16<sup>th</sup> day of June, 2003.

  
Samuel I. Streichman  
Town Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE 602.542.8855

TERRY GODDARD  
ATTORNEY GENERAL

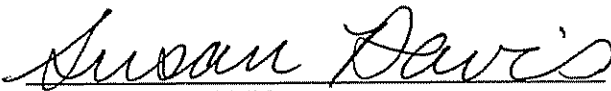
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-0388TRN (JPA 02-202), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED June 23, 2003.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/ss

att.